

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|  |   |                 |
|--|---|-----------------|
| MICHAEL SANKOWSKI,                     | : | CIVIL ACTION    |
|  | : |                 |
| Plaintiff,                             | : | NO. 06-CV-02469 |
|  | : |                 |
| v.                                     | : |                 |
|  | : |                 |
| CITIBANK (SOUTH DAKOTA), N.A., et al., | : |                 |
|  | : |                 |
| Defendants.                            | : |                 |

**MEMORANDUM AND ORDER**

Stengel, J.

July 14, 2006

Michael Sankowski ("Plaintiff") alleges that defendants Citibank (South Dakota), N.A. ("Citibank") and Alliance One, d/b/a Receivable Management, Inc. ("Alliance") (collectively "Defendants") violated the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, *et seq.* (the "FDCPA") while attempting to collect amounts charged to Plaintiff's credit card. Citibank has filed a motion to dismiss and argues that it is not a "debt collector" as defined by the FDCPA. For the reasons described below, I will grant Citibank's motion and dismiss it from this case.

**I. BACKGROUND<sup>1</sup>**

Plaintiff filed this case in Philadelphia Municipal Court on May 9, 2006, alleging that Citibank and Alliance's debt collection practices violated several sections of the FDCPA. The facts alleged in the complaint are sparse, but it is clear that at some point

---

<sup>1</sup>The following background facts are derived from Plaintiff's complaint, originally filed in the Philadelphia Municipal Court.

Citibank issued a credit card to Plaintiff. On several occasions thereafter, Citibank and Alliance attempted to collect from Plaintiff amounts charged on the credit card by mailing "illegal collection letters" addressed to him. Citibank and Alliance sought to "harass, annoy and embarrass" Plaintiff by sending these letters. On June 12, 2006, Defendants removed the case to federal court on the basis of federal question jurisdiction, and Citibank filed the instant motion to dismiss on June 19, 2006. Plaintiff has not opposed the motion to dismiss Citibank from the case.<sup>2</sup>

## **II. STANDARD FOR A MOTION TO DISMISS**

The purpose of a motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure is to test the legal sufficiency of a complaint. Sturm v. Clark, 835 F.2d 1009, 1011 (3d Cir. 1987). Courts may grant a motion to dismiss only where "it appears beyond a reasonable doubt that the plaintiff can prove no set of facts in support of his claim that would entitle him to relief." Carino v. Stefan, 376 F.3d 156, 159 (3d Cir. 2004) (quoting Conley v. Gibson, 355 U.S. 41, 45–46 (1957)). When considering a motion to dismiss, courts must construe the complaint liberally, accept all factual allegations in the complaint as true, and draw all reasonable inferences in favor of the plaintiff. Id. See also D.P. Enters. v. Bucks County Cmty. Coll., 725 F.2d 943, 944 (3d

---

<sup>2</sup>Plaintiff's opposition to the motion to dismiss was due by July 3, 2006.

Cir. 1984). However, courts will not accept as true "bald assertions" or "vague and conclusory allegations." See Morse v. Lower Merion Sch. Dist., 132 F.3d 902, 906 (3d Cir. 1997); Sterling v. Southeastern Pa. Transp. Auth., 897 F. Supp. 893 (E.D. Pa. 1995).

### **III. DISCUSSION**

#### **A. Citibank is not liable under the FDCPA because it is a "creditor" and not a "debt collector."**

The FDCPA regulates the debt collection practices of "debt collectors," as that term is defined by the statute. The FDCPA generally defines a "debt collector" as "any person who . . . regularly collects or attempts to collect . . . debts owed or due or asserted to be owed or due another." 15 U.S.C. § 1692a(6). See also Pollice v. Nat'l Tax Funding, L.P., 225 F.3d 379, 403 (3d Cir. 2000) (quoting Aubert v. Am. Gen. Fin. Inc., 137 F.3d 976, 978 (7th Cir. 1998)). By contrast, creditors who collect their own debts in their own names are beyond the purview of the FDCPA. Pollice, 225 F.3d at 403. "Creditors who collect in their own name and whose principle business is not debt collection . . . are not subject to the [FDCPA]." Id.

The complaint in this case does not allege that Citibank is a "debt collector" as defined by the FDCPA. Instead, the face of the complaint and the documents attached to it demonstrate that Citibank is a creditor and not a "debt collector." Thus, even after

accepting all of the facts alleged in the complaint as true, Plaintiff has no FDCPA claim against Citibank because the complaint alleges that Citibank attempted to collect its own debt and not that of a third party.<sup>3</sup>

**B. The complaint does not allege sufficient facts to find Citibank vicariously liable for Alliance's actions.**

A broad reading of the complaint suggests that Plaintiff is also alleging that Citibank is liable for Alliance's actions on an agency theory basis. The Third Circuit has recognized that there are federal cases supporting a claim for vicarious liability under the FDCPA in certain circumstances. Pollice, 225 F.3d at 404. Specifically, an entity that itself falls within the FDCPA's definition of a "debt collector" may be found vicariously liable for unlawful collection activities carried out by another on its behalf. Id.

In this case, however, I have already determined that Citibank is not a "debt collector" under the FDCPA because it is attempting to collect its own debt in its own name. Any vicarious liability claim raised by the complaint is therefore insufficient. Accordingly, I will grant Citibank's motion to dismiss and terminate it as a defendant

---

<sup>3</sup>Moreover, as Citibank notes, the FDCPA does not apply to the originator of a loan even when the originator is no longer a creditor. See 15 U.S.C. § 1692a(6) ("The term ["debt collector"] does not include . . . any person collecting or attempting to collect any debt owed or due . . . another to the extent such activity . . . *concerns a debt which was originated by such person.* . . .") (emphasis added).

from this case. See Gary v. Goldman & Co., 180 F. Supp. 2d 668, 672–73 (E.D. Pa. 2002) (granting motion to dismiss because defendant was not a "debt collector" under the FDCPA and because there were no allegations in the complaint demonstrating that defendant could be held vicariously liable under the FDCPA).

#### **IV. CONCLUSION**

For the reasons described above, I will grant Citibank's motion to dismiss. An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

|  |   |                 |
|--|---|-----------------|
| MICHAEL SANKOWSKI,                     | : | CIVIL ACTION    |
|  | : |                 |
| Plaintiff,                             | : | NO. 06-CV-02469 |
|  | : |                 |
| v.                                     | : |                 |
|  | : |                 |
| CITIBANK (SOUTH DAKOTA), N.A., et al., | : |                 |
|  | : |                 |
| Defendants.                            | : |                 |

**ORDER**

**AND NOW**, this 14th day of July, 2006, upon consideration of Defendant's Motion to Dismiss Plaintiff's Complaint (Docket No. 2), it is hereby **ORDERED** that the motion is **GRANTED**. The Clerk of Court shall remove Citibank (South Dakota), N.A. as a defendant from the above-captioned case.

BY THE COURT:

/s/ Lawrence F. Stengel  
LAWRENCE F. STENGEL, J.